

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT A. TOMPKINS)	
)	
COMPLAINANT)	
)	
vs.)	CASE NO. 97-051
)	
BELLSOUTH TELECOMMUNICATIONS,)	
INC.)	
)	
DEFENDANT)	

O R D E R

On January 29, 1997, Robert A. Tompkins (hereinafter "Complainant") filed a Complaint against BellSouth Telecommunications, Inc. ("BellSouth"). On February 10, 1997, the Commission issued its Order pursuant to 807 KAR 5:001, Section 12, requiring BellSouth to satisfy the matters complained of or to file a written answer. On February 20, 1997, BellSouth filed its Answer responding to the Complaint and requesting that the Complaint be dismissed.

Complainant alleges that BellSouth's having charged him \$493.00 for special construction to install two telephone lines to his home on Jackstown Road was discriminatory. He states that, had BellSouth extended its line west along Jackstown Road past his house, the house farthest west in the exchange, the house would be fewer than 750 feet from the line and he would, pursuant to BellSouth's tariff, have been entitled to obtain the construction without charge.¹ Instead of continuing its line west along Jackstown

¹ See BellSouth General Subscriber Services Tariff, A5.1.3B.3.

Road, however, BellSouth routed its line south at Little Rock Jackstown Road. Complainant adds that the line "goes right by" the home of his neighbor to the east, and notes that the two decisions resulting in the alleged discrimination -- e.g., to end the exchange just west of Complainant's house and not to run the line farther west on Jackstown Road -- were entirely at the discretion of BellSouth. He asks that the special construction charge be refunded and that BellSouth consider "special circumstances" when it applies its tariffs.

In its Answer, BellSouth states that it applied its tariff appropriately, that it does not discriminate among its customers in regard to special construction charges, and that it has not discriminated against Complainant. BellSouth states that its line, in veering south on Little Rock Jackstown Road rather than continuing west on Jackstown Road, runs in the direction of its Little Rock Exchange office. Complainant's house, which is west of the point at which the line turns south, is located on a large farm. His driveway is approximately 2,000 feet from the driveway of his nearest neighbor to the west. Thus, even if Complainant were served from the Millersburg exchange, he would be subject to A5 tariff charges.

Both parties have submitted drawings illustrating the route followed by the telephone line and the general relationship of Complainant's house to that line. There is no dispute as to any material fact. The parties disagree only on a point of law -- whether BellSouth's A5 tariff charges, in this instance, were discriminatorily applied. The Commission agrees with BellSouth that they were not and that, as a matter of law, this Complaint should be dismissed.

KRS 278.170(1) prohibits utilities from giving "unreasonable preference or advantage" to customers in performing "a like and contemporaneous service under the same or substantially the same conditions." Thus, Complainant is required to show that BellSouth has applied its A5 tariff charges to the construction at issue differently than it applies them in other instances where the same, or substantially the same, conditions apply. Complainant makes no such showing. He alleges that the line "goes right by the complainants [sic] neighbor on the east side of the complainants [sic] property," seeming to imply that BellSouth unreasonably has accorded his neighbor more favorable treatment. However, BellSouth's having extended the line along the road fronting the neighbor's house while turning it south before it reaches Complainant's residence is not unreasonable. According to maps submitted by both parties, the neighbor's property lies east of the point where the line turns south to follow Little Rock Jackstown Road, toward the central office of the exchange. Complainant's property lies west of the intersection of Jackstown Road and Little Rock Jackstown Road. Extending the main line along Jackstown Road to Complainant's property would impermissibly require all customers to subsidize service that benefits only one. See Marshall County v. South Central Bell Telephone Co., Ky., 519 S.W.2d 616, 617 (1975). This is not the case in regard to Complainant's neighbor to the east. Because "the same or substantially the same conditions" do not apply in the case of Complainant and that of his neighbor to the east, no unreasonable discrimination pursuant to KRS 278.170 has occurred.

Finally, KRS 278.160(2) prohibits a utility from charging any customer "greater or less compensation for any service" than that prescribed in its tariffs. Because other

customers in similar conditions would be charged identically computed A5 tariff charges,
BellSouth is required by law to bill Complainant as it has.

The Commission being sufficiently advised, IT IS THEREFORE ORDERED that the
Complaint is dismissed.

Done at Frankfort, Kentucky, this 8th day of April, 1997.

PUBLIC SERVICE COMMISSION

Linda K. Brearholt
Chairman

Elmer J. Wheeler
Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director